

**REMARKS/ARGUMENTS**

In the office action dated May 5, 2005, the previous rejections were withdrawn, and claims 1-11 and 15-18 were rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,285,856 to *Aguayo*. Claim 28 was also rejected under 35 U.S.C. § 103(a) over *Aguayo*, and claims 19 and 29-39 were rejected under 35 U.S.C. § 103(a) over *Aguayo* in view of the Background of the Invention.

The present amendment updates the priority claim in paragraph [01] to recite the patent number of the issued parent case, and corrects a clerical error in the dependent claim numbering in claim 35. No new matter is added by the amendment, and claims 1-11, 15-19, and 28-39 are pending in the application. Reconsideration and withdrawal of the rejections is respectfully requested in light of the remarks that follow.

**Interview Summary**

Applicant's representative would like to thank Examiner Desir for granting a telephonic interview on October 14, 2004. During the interview, it was agreed that the previous final office action of April 20, 2004, would be withdrawn, and a new non-final office action would be issued.

**The rejection of the claims over *Aguayo* is addressed**

As noted above, claims 1-11 and 15-18 were rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,285,856 to *Aguayo*, claim 28 was rejected under 35 U.S.C. § 103(a) over *Aguayo*, and claims 19 and 29-39 were rejected under 35 U.S.C. § 103(a) over *Aguayo* in view of the Background of the Invention. These rejections are respectfully traversed because *Aguayo* fails to describe or suggest all the elements recited in independent claims 1, 6, 7 and 15.

Claim 1 includes "the host terminal is operable to: provide a test signal to the user drop." Claim 1, lines 4-5. *Aguayo* does not disclose or suggest the transmission of a test signal, but instead describes generation and reception of control or polling signals. See *Aguayo*, column 7, lines 1-6, column 8, lines 8-14. These control or polling signals transmit directions to the

receiving unit to conduct a test or report a status. For example, the signal can contain a command that directs the unit to test the strength of cable signal being received at the unit and report the results. *See Aguayo*, column 7, lines 1-6. The signal, however, is not a test signal that provides a standard or reference that can be accessed at the user drop to test the performance capability of a communication network. For example, the test signals provided in the present invention include video test signals used to test the quality of a video displays, and data test signals that include data files of known size and content that are used to verify a data transfer rate and identify errors and losses of in the data. *See, e.g.*, Specification, page 6, lines 21-28.

Because the control and polling signals described in *Aguayo* are not test signals, and because *Aguayo* neither describes nor suggests providing test signals, claim 1 is allowable over the reference. Similarly, because claims 6, 7, and 15 include providing or receiving a test signal, these claims are also allowable over *Aguayo* as well. Claims 2-5, 8-11, 16-18 and 28-39, which depend from the claims 1, 6, 7, and 15, are allowable over *Aguayo* for at least the same reasons. Accordingly, withdrawal of the rejections of claims 1-11 and 15-18 under § 102(e) over *Aguayo*, claim 28 under § 103(a) over *Aguayo*, and claims 19 and 29-39 under § 103(a) over *Aguayo* in view of the Background of the Invention, is respectfully requested.

### Conclusion

In view of the foregoing, Applicant believes all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Appl. No. 10/062,959  
Amdt. dated June 10, 2005  
Reply to Office Action of May 5, 2005

PATENT

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



Eugene J. Bernard  
Reg. No. 42,320

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, 8<sup>th</sup> Floor  
San Francisco, California 94111-3834  
Tel: 303-571-4000  
Fax: 415-576-0300  
G3B:tnd  
60503433 v1